

1 **UNITED STATES DISTRICT COURT**

2 **DISTRICT OF NEVADA**

3 MARCOS GARCIA,

4 Plaintiff

5 v.

6 NANCY A. BERRYHILL,

7 Defendant

Case No.: 2:16-cv-01018-APG-NJK

**Order Granting Motion for Attorney Fees**

[ECF No. 31]

9 Plaintiff Marcos Garcia's attorney moves for an award of attorney's fees following  
10 Garcia's successful motion for a remand for further proceedings. No party opposed the motion.  
11 I grant the motion.

12 Garcia entered into a contingency fee agreement with his attorneys for 25% of any past-  
13 due benefits awarded upon a court-ordered reversal of an unfavorable decision by an  
14 administrative law judge. ECF No. 31-2. I reversed the administrative law judge's decision and  
15 remanded for further proceedings ECF No. 28. Upon remand, the Social Security  
16 Administration awarded Garcia \$123,814.00 in past-due benefits.<sup>1</sup> ECF Nos. 31-3, 31-4 at 3.

17 Under 42 U.S.C. § 406(b)(1)(A), when a claimant who is represented by counsel obtains  
18 a favorable court judgment, "the court may determine and allow as part of its judgment a  
19 reasonable fee for such representation, not in excess of 25 percent of the total of the past-due  
20 benefits to which the claimant is entitled by reason of such judgment." This fee is payable out of

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23 <sup>1</sup> The motion calculates a slightly higher past benefits amount. I base my calculation on the  
amount the Social Security Administration withheld as 25% of the award.

1 the past-due benefits awarded to the claimant and not as an additional recovery from the  
2 defendant. *Id.*

3 Although other fee-shifting schemes resort to use of the “lodestar” method to calculate a  
4 reasonable attorney’s fee, § 406(b) is not a fee-shifting statute. *Gisbrecht v. Barnhart*, 535 U.S.  
5 789, 802 (2002). The statute requires the attorney’s fee be taken from the past-due benefits  
6 awarded to the claimant and not as an additional recovery from the defendant. *Id.* Thus, § 406(b)  
7 “does not displace contingent-fee agreements as the primary means by which fees are set for  
8 successfully representing Social Security benefits claimants in court. Rather, § 406(b) calls for  
9 court review of such arrangements as an independent check, to assure that they yield reasonable  
10 results in particular cases.” *Id.* at 807. The only statutorily-imposed constraint is that the fee  
11 agreement cannot “provide for fees exceeding 25 percent of the past-due benefits.” *Id.* (citing  
12 § 406(b)(1)(A)).

13 Consequently, in Social Security cases, I begin with the contingency fee agreement and  
14 then “test[] it for reasonableness.” *Id.* at 808. “[T]he question is whether the amount need[s to]  
15 be reduced, not whether the lodestar amount should be enhanced.” *Crawford v. Astrue*, 586 F.3d  
16 1142, 1149 (9th Cir. 2009) (en banc). I may reduce the fee award “based on the character of the  
17 representation and the results the representative achieved.” *Gisbrecht*, 535 U.S. at 808. Thus, I  
18 “may properly reduce the fee for substandard performance, delay, or benefits that are not in  
19 proportion to the time spent on the case.” *Crawford*, 586 F.3d at 1151. I may “consider the  
20 lodestar calculation, but only as an aid in assessing the reasonableness of the fee.” *Id.* (emphasis  
21 omitted).

22 The attorney seeking the fee award bears the burden of establishing the fee sought is  
23 reasonable. *Id.* at 1148. The award of fees under § 406(b) lies within my discretion. *Id.* at 1147.


1 Garcia's attorney requests \$18,000.00, which is well below the contingency amount of  
2 \$30,953.50. ECF Nos. 31 at 3, 31-4 at 3. He presents evidence that counsel spent 11.4 hours on  
3 the case and a paralegal spent 3.0 hours. ECF No. 31-5. There is no evidence of substandard  
4 performance. Rather, counsel obtained a favorable result of a remand and subsequent award of  
5 substantial past benefits. There is no evidence counsel caused any delay to increase the  
6 contingent amount. Additionally, the fees are not excessively large in relation to the past-due  
7 benefits obtained for the claimant. Garcia's attorney therefore has met his burden of establishing  
8 a reasonable fee award in the amount of \$18,000.00.

9 I previously granted the parties' stipulation to award Garcia \$2,200.00 in attorney's fees  
10 under the Equal Access to Justice Act (EAJA). ECF Nos. 29, 30. Garcia's attorney agrees he  
11 will credit this amount against any fee awarded under 42 U.S.C. § 406(b). ECF No. 31 at 1-2; *see*  
12 *also Gisbrecht*, 535 U.S. at 796 (stating that a claimant may obtain fee awards under both  
13 § 406(b) and the EAJA but the attorney must refund the smaller fee amount to the claimant).

14 IT IS THEREFORE ORDERED that the motion for attorney's fees (**ECF No. 31**) is  
15 **GRANTED**. Plaintiff Marcos Garcia's attorney, Cyrus Safa, is awarded attorney's fees pursuant  
16 to 42 U.S.C. § 406(b) in the amount of \$18,000.00.

17 IT IS FURTHER ORDERED that Cyrus Safa shall reimburse plaintiff Marcos Garcia the  
18 amount of \$2,200.00 for EAJA fees previously paid by the Commissioner.

19 DATED this 6th day of February, 2019.

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22 ANDREW P. GORDON  
23 UNITED STATES DISTRICT JUDGE